

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION  
CASE NO. 1:22-cr-20431-KMM-2

IN RE: FTX CRYPTOCURRENCY  
EXCHANGE COLLAPSE LITIGATION

Miami, Florida

June 21, 2023

10:00 AM - 11:12 PM

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TRANSCRIPT OF STATUS CONFERENCE  
BEFORE THE HONORABLE MICHAEL MOORE  
UNITED STATES DISTRICT JUDGE

## APPEARANCES:

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1 (The following status hearing was held:)

2 THE COURT: Calling Case 1:23-MD-03076 in re: FTX  
3 Cryptocurrency Exchange Collapse Litigation.

4 Counsel, please state your name for the record,  
5 beginning with the plaintiff.

6 MR. BOIES: Good morning, Your Honor. May it please  
7 the Court, David Boies of Boies Schiller & Flexner for the  
8 plaintiffs. With me at counsel table is my partner, Stephen  
9 Zack.

10 MR. ZACK: Good morning.

11 THE COURT: Good morning.

12 MR. MOSKOWITZ: Good morning, Your Honor. Adam  
13 Moskowitz for The Moskowitz Law Firm. And with me here are my  
14 partners, Howard Bushman and Joseph Kaye.

15 MS. FURST: Good morning, Your Honor. Rachel Furst of  
16 Maderal Byrne & Furst, and I'm here with my partner, John  
17 Byrne.

18 THE COURT: Okay. And I know there are a number of  
19 other counsel for plaintiffs as well. Do they want to be  
20 recognized in the event that you want to speak? If you do,  
21 that's fine.

22 If you don't -- for the defense.

23 MR. GREENBERG: Good morning, Your Honor. Gerald  
24 Greenberg from Gelber Schachter & Greenberg on behalf of Sam  
25 Bankman-Fried.

1                   MR. KROEGER: Good morning, Your Honor. Thomas Kroeger  
2 of Colson Hicks Eidson on behalf of Tom Brady, Gisele Bundchen,  
3 Lawrence David, Golden State Warriors, Shaquille O'Neal, and  
4 Naomi Osaka.

5                   MR. CARVER: Good morning, Your Honor. Christopher  
6 Carver of Akerman LLP on behalf of Udonis Haslem and David  
7 Ortiz.

8                   MS. BINA: Good morning, Your Honor. Jessica Stebbins  
9 Bina of Latham Watkins on behalf of Shaquille O'Neal, Tom  
10 Brady, Gisele Bundchen, and Larry David.

11                  MR. ZUTSHI: Good morning, Your Honor. Rishi Zutshi,  
12 Cleary Gottlieb Steen Hamilton, on behalf of Sequoia Capital  
13 and the investment --

14                  MR. DRYLEWSKY: Good morning, Judge Moore. Alex  
15 Drylewsky from Skadden Arps on behalf of Paradigm Operations  
16 LP.

17                  MR. PITTINGER: Todd Pittenger with GrayRobinson on  
18 behalf of Paradigm Operations LP.

19                  MS. TERTERYAN: Good morning, Your Honor. Anna  
20 Terteryan, Kirkland & Ellis, on behalf of defendant Thoma  
21 Bravo.

22                  MS. KAUFFMANN: Good morning, Your Honor. Ana  
23 Kauffmann on behalf of Thoma Bravo, local counsel, Berger  
24 Singerman.

25                  THE COURT: Anybody else?

1                   All right. Well, thank you for all being here today.  
2 This is our first get-together for a status conference  
3 regarding this MDL litigation. And it's certainly appropriate  
4 to get the parties together and try to map out where we're  
5 going to go and how we're going to get there. There are a  
6 number of issues that I want to address. You also have been  
7 given an opportunity to submit any topics for discussion, and I  
8 have received them. I have reviewed them from all the parties  
9 that have submitted them.

10                  I'm going to go -- I'm going to start with the  
11 plaintiffs' preliminary report, Docket Entry Number 40. So  
12 we'll hear from plaintiffs' counsel on that.

13                  This morning I was provided with additional information  
14 regarding the plaintiffs', apparently, agreement as to  
15 plaintiffs' co-lead counsel, plaintiffs' steering committee,  
16 and plaintiffs' committees and chairpersons for various  
17 subtopics that will arise likely in the course of the  
18 litigation.

19                  So that really did address at least one of the issues  
20 that we were going to have to work on and address. So good for  
21 plaintiffs' side of the -- of the court for addressing those  
22 issues and coming to some -- coming to an agreement on that.

23                  But beyond that, I want to hear from plaintiffs'  
24 counsel on your preliminary report in advance of the status  
25 conference and what matters you want to take up.

1                   Okay?

2                   MR. BOIES: Thank you, Your Honor. May it please the  
3 Court, David Boies. As we indicated in our preliminary report,  
4 the first issue was to try and organize the plaintiffs, and  
5 we've accomplished that.

6                   Second, we would like to discuss an initial schedule  
7 for the filing of an amended consolidated complaint or  
8 complaints as well as -- obviously, there will be responses to  
9 that; answers perhaps; perhaps motion to dismiss. We have some  
10 personal jurisdiction issues that we have been discussing with  
11 certain of the plaintiffs' counsel and certain of the  
12 defendants' counsel.

13                  Given the MDL order, we think the personal jurisdiction  
14 issues will be resolved, either that the defendants will accept  
15 personal jurisdiction here or alternatively, to avoid a lengthy  
16 fight, we will simply file cases in their home states that  
17 would then be tagalong cases to this Court.

18                  So one way or the other, we think that the personal  
19 jurisdiction issues will be resolved. But there will be,  
20 obviously, subsequent motions, and so what we would like to ask  
21 the Court to consider is setting a schedule for the filing of a  
22 consolidated amended complaint or complaints that will bring  
23 all of the cases before Your Honor in an organized way, and  
24 then a schedule for the defendants to respond to those.

25                  I think one -- one issue for the Court is whether or

1 not discovery should be stayed pending notice of those filings.  
2 I know that different courts approach that issue differently,  
3 and we're just looking for guidance from the Court as whether  
4 the Court thinks it's appropriate in this MDL to stay discovery  
5 pending those motions and whether it would be the Court's will  
6 that we proceed with the discovery.

7 I think those are sort of the key issues -- key initial  
8 issues that we think would be useful to talk about today.

9 THE COURT: Okay. Well, that's helpful. And let's  
10 start there and make sure that we stick to each of these issues  
11 but -- and I know you have a number of other issues, but I  
12 don't want to get ahead of them, but let's just -- let me hear  
13 from defense counsel on the personal jurisdiction issue.

14 And I don't know if any one of you want to speak on  
15 behalf of all of you. I know there are individual issues. So  
16 if not, I'm prepared to hear from each of you if there is some  
17 agreement or disagreement or how best you want to proceed on  
18 that.

19 MR. KROEGER: Good morning, Your Honor. Thomas  
20 Kroeger. I will be speaking on behalf of the sports and  
21 entertainment defendants for purposes of today's hearing.

22 THE COURT: Okay. And I have got -- what do I have? --  
23 like three bundles of defendants here? Is that a fair  
24 characterization?

25 MR. KROEGER: With respect to the sports and

1 entertainment defendants or overall?

2 THE COURT: Overall.

3 MR. KROEGER: There are, yes, several bundles of  
4 defendants.

5 THE COURT: Okay. That's going to come up later on.

6 But when you say the sports and entertainment, can you -- I  
7 think I know what you mean --

8 MR. KROEGER: Sure.

9 THE COURT: -- but can you tell me specifically --

10 MR. KROEGER: I can specifically identify that would be  
11 Tom Brady, Gisele Bundchen, Lawrence David, Golden State  
12 Warriors, Shaquille O'Neal, Naomi Osaka, Stephen Curry, Udonis  
13 Haslem, William Trevor Lawrence, Shohei Ohtani, Kevin O'Leary,  
14 David Ortiz, and the Solomid Corporation.

15 THE COURT: Okay. With respect to personal  
16 jurisdiction, can you go ahead and address those?

17 MR. KROEGER: Yes. With respect to personal  
18 jurisdiction, those sports and entertainment defendants who had  
19 previously filed motions with respect to personal jurisdiction  
20 are essentially evaluating whether they would be refiling.

21 It's possible, based on representation made by  
22 plaintiffs' counsel, that that could be worked out, either  
23 agreements would be filed in the other jurisdictions and then  
24 have them transferred back to your court here, but that is an  
25 issue that some of the sports entertainment defendants would

1 like to evaluate.

2 THE COURT: Okay. So even within your group, there is  
3 a difference of opinion between the various defendants as to  
4 whether they would or would not --

5 MR. KROEGER: It's not so much a difference of opinion.  
6 It's that some defendants have pursued that previously before  
7 the transfer. Obviously, some did not. Those that have  
8 previously pursued it would like to still reserve the ability  
9 to potentially proceed with that.

10 THE COURT: Okay. So what kind of time frame are you  
11 on for resolving those issues?

12 MR. KROEGER: I think there will need to be further  
13 discussions. I think that is something that could probably be  
14 amicably resolved fairly expeditiously.

15 THE COURT: Okay. Can you quantify that?

16 MR. KROEGER: I don't know. I suppose within 10 or  
17 14 days that could be resolved.

18 THE COURT: Well, let's give you 14 days. Okay? So  
19 within 14 days, you will resolve the personal jurisdiction  
20 issue by doing what? Either consenting and waiving or  
21 contesting?

22 MR. KROEGER: Correct.

23 THE COURT: So we'll know in 14 days whether you want  
24 to contest personal jurisdiction.

25 MR. KROEGER: Correct.

1                   THE COURT: Okay. Are we all clear on that? Do we  
2 need any further discussion on that?

3                   Will that also include the question that was raised  
4 about where other cases would be filed?

5                   MR. KROEGER: I believe so. If those cases -- if --  
6 essentially the resolution is that those cases would have to be  
7 filed, say, for instance, in the Northern District of the  
8 California, then that's where those cases will be filed and  
9 then tagged along here.

10                  THE COURT: Okay. All right. Does that satisfy --  
11 does that answer your question? You have 14 days to -- they  
12 said they're going to resolve it and decide which way they want  
13 to go?

14                  MR. BOIES: Yes, Your Honor. We think that's an  
15 excellent way to approach it.

16                  THE COURT: Okay. Anybody else on that particular  
17 issue?

18                  MR. ZUTSHI: Yes, Your Honor. It's Rishi Zutshi from  
19 Cleary Gottlieb on behalf of Sequoia.

20                  At Your Honor's instruction, we've tried to coordinate  
21 among the other investor defendants; so I will do my best to  
22 speak for that group and let others chime in if necessary.

23                  We have not heard from plaintiffs' counsel about any  
24 proposals with respect to personal jurisdiction until Mr. Boies  
25 just now made those statements this morning. Our -- the

1 investor defendants are differently situated in that there  
2 are -- many of them do intend to raise personal jurisdiction  
3 defenses. None of those issues have been briefed yet.

4 There's also some housekeeping issues including the  
5 fact that one of the cases in which a large group of the  
6 defendants -- the investor defendants have been named is the  
7 O'Keefe case, which is currently pending before Judge Martinez  
8 and is still subject to a pending motion to -- for an  
9 interdistrict transfer.

10 So I think from our perspective --

11 THE COURT: What's that? You said the O'Keefe case?

12 MR. ZUTSHI: The O'Keefe case. That's correct,  
13 Your Honor.

14 THE COURT: Well, we'll follow up on that. You want to  
15 transfer it to the MDL?

16 MR. ZUTSHI: We do. And plaintiffs and defendants in  
17 that case have filed a joint motion to transfer, and also  
18 because there's a response deadline this Friday in that case, I  
19 think; so --

20 THE COURT: So that's just -- that's pending before  
21 Judge Martinez?

22 MR. ZUTSHI: That's correct.

23 THE COURT: All right. Well, I'll see if we can  
24 address that. You say the response is due --

25 MR. ZUTSHI: There's technically responses due in that

1 case this Friday. To the complaint, there's stipulation with  
2 plaintiffs' counsel.

3 THE COURT: Okay. So my understanding is that we sent  
4 them the order. They signed it. It hasn't been docketed, so  
5 that frees up your weekend.

6 MR. ZUTSHI: That will ease the minds of many of the  
7 defense counsel --

8 THE COURT: Okay.

9 MR. ZUTSHI: -- in that case. Thank you, Your Honor.

10 In terms of personal jurisdiction issues, Mr. Boies'  
11 proposal is to consolidate the amended complaints -- complaint  
12 or complaints. It's one that we're happy to consider. I think  
13 we'll need some clarity as to whether those complaints will be  
14 filed purely as an administrative matter in this case or  
15 whether they will be filed in superseding complaints in  
16 individual actions.

17 It is important to the investor defendants that we're  
18 able to preserve both our motions to dismiss on 12(b) (6)  
19 grounds, also personal jurisdiction issues where they're  
20 available.

21 So we're happy to discuss that further with plaintiffs'  
22 counsel and work cooperatively. I do think that we will need  
23 some clarity from plaintiffs' counsel in the first instance as  
24 to what their proposal is for the filing of consolidated  
25 amended complaints or a single complaint.

1                   THE COURT: Can you live within that same time frame,  
2 14 days?

3                   MR. ZUTSHI: So if we have clarity -- if we have  
4 clarity from the plaintiffs -- I think we might need an initial  
5 period, Your Honor, where we hear from plaintiffs what their  
6 proposal is. We haven't heard whether they plan to file  
7 amended complaints and what the new claims would be with  
8 respect to our defendants yet. So we're operating right now on  
9 a little bit of a -- in the dark, as it were.

10                  And so I'm hesitant to commit to coming to an agreement  
11 on how we will respond to complaints when we haven't heard how  
12 much time it will be for them or what they'll encompass and  
13 where they will be filed.

14                  THE COURT: So do you want to be back here in 14 days  
15 to talk about that?

16                  MR. ZUTSHI: Alternatively, if plaintiffs can let us  
17 know what their timing is like for making a decision on that,  
18 then we could peg a timeline off of that.

19                  THE COURT: Okay. Well, this is the value of having us  
20 here today; so can you answer their questions?

21                  MR. BOIES: Your Honor, I think there are two issues  
22 here. One is the personal jurisdiction issue, and one is the  
23 consolidated amended complaint issue.

24                  THE COURT: All right.

25                  MR. BOIES: With respect to personal jurisdiction, we

1       ought to be able to solve that in 14 days because we're going  
2       to go one of two things. Either they're going to waive  
3       personal jurisdiction and be in front of this Court, or we're  
4       going to file in whatever jurisdiction they say that they are  
5       present in, and that will come to this Court as a tagalong  
6       case.

7           So I think all they have to do is tell us within a  
8       reasonable period of time which of those approaches they're  
9       going to take. And we can then immediately -- either if they  
10       waive, there's no issue. If they say, "We want you to file in  
11       our home district to resolve any personal jurisdiction issue,"  
12       as we've talked about with the sports and entertainment  
13       defendants, in order to move this along and not burden the  
14       Court with unnecessary motion practice, we'll file those  
15       motions and those complaints, and those will be transferred  
16       here. So I think that can be done within the 14 days.

17           With respect to our consolidated amended complaint, as  
18       the Court is aware in every MDL, we need to file a consolidated  
19       complaint that brings all of the cases that have been  
20       transferred to this Court together.

21           And that is something that, as I said earlier, I would  
22       like to get the Court's guidance as to what an appropriate time  
23       frame would be. Something that perhaps a 45-day period of time  
24       might be an appropriate time we can do it. We want to do it  
25       consistent with whatever the Court's schedule is in terms of

1 that.

2 THE COURT: Well, I'm in agreement that we -- it would  
3 be preferable to have an amended consolidated complaint and to  
4 bring all of these actions together under one complaint. It  
5 would certainly help manage the litigation in its entirety, but  
6 -- and you mentioned 45 days. Is that what you're moving for?

7 MR. BOIES: That's what we propose, Your Honor.

8 THE COURT: Any objection to 45 days to file a  
9 consolidated amended complaint?

10 MR. KROEGER: The one thing, Your Honor, that we would  
11 suggest is that given the difference in distinct factual legal  
12 claims with respect to these sports and entertainment  
13 defendants, is that that be tracked through a different  
14 complaint because a lot of the allegations that go to FTX, FTX  
15 employees, financial advisors, and accountants simply are not  
16 present with respect to the sports and entertainment  
17 defendants.

18 So as we stated in our preliminary report, we are of  
19 the view that it would actually promote efficiency and economy  
20 if the celebrity and sports -- excuse me, the sports and  
21 entertainment defendants are essentially on a separate track  
22 through a different complaint.

23 THE COURT: Just for housekeeping purposes, when each  
24 of you speak, can you identify yourself for the record by name  
25 again.

1                   MR. KROEGER: Yes.

2                   THE COURT: You know, it's okay. I just have a court  
3 reporter who's in front of me, and she's trying to keep track  
4 of who is saying what, and I think it might be helpful to her  
5 to have you identify yourself by name each time you speak.

6 Okay?

7                   MR. KROEGER: Yes, I apologize. Thomas Kroeger on  
8 behalf of the sports and entertainment defense.

9                   THE COURT: Okay. Well, so this gets to another issue,  
10 and that is the separate track of an issue that was raised.  
11 What is plaintiffs' response to that?

12                  MR. BOIES: Your Honor, there are great many  
13 overlapping issues. There are also some substantial individual  
14 issues. And I think that you could have separate, quote,  
15 "tracks," closed quote, or you could have a consolidated  
16 complaint.

17                  I don't think that's going to make a huge amount of  
18 difference in terms of how the Court is going to handle the  
19 cases because every proceeding is going to affect all of the  
20 so-called tracks.

21                  And I think that it's probably more efficient, in terms  
22 of management to have a single consolidated complaint with a  
23 count for the individual defendants, but I think it could be  
24 done the other way too. I think that, in terms of efficiency  
25 of management, you're going to want to have the overall issues.

1       The overall issues with respect to FTX are going to be the same  
2       whether it's a sports and entertainment defendant, whether it's  
3       an accounting firm, whether it's investors, whether a venture  
4       capital firm. All of those issues, which are going to be many,  
5       are going to be the same regardless of who the defendant is.

6               There's then going to be some significant issues that  
7       are going to be unique to the lawyers, to the venture capital  
8       firms, to the accountants, to each of the individual defendant  
9       groups. Those in one consolidated complaint would be handled  
10      as separate counts where you would allege in those counts the  
11      issues that were particular to those particular groups of  
12      defendants.

13               We think that's the most efficient way to do it, but we  
14      also, if the Court would prefer to do it another way -- we  
15      could have separate complaints. Those separate complaints  
16      would be much larger in terms of total pages to have to deal  
17      with because we would have to repeat the common allegations in  
18      each of the -- each of the complaints, but it's something that  
19      administratively we could do.

20               THE COURT: Do you want to respond to that?

21               MR. KROEGER: Yes, Your Honor. Thomas Kroeger on  
22      behalf of the sports and entertainment defendants.

23               It would perhaps be practical to do a single  
24      consolidated complaint so long as it is very clear and  
25      compartmentalizes what the allegations are as to the different

1 bundles, as Your Honor mentioned, of defendants. Otherwise,  
2 there's going to be a lot of issues that are simply not germane  
3 or relevant to these specific defendants.

4 THE COURT: And what about the other defense counsel on  
5 this topic?

6 MR. ZUTSHI: Rishi Zutshi. Your Honor, we're willing  
7 to evaluate a proposal either way, whether it's a single  
8 consolidated amended complaint or separate complaints.  
9 Sometimes the devil is in the details on these issues. We  
10 don't have a view on either conceptually, but we do think it's  
11 going to be important, from our clients' perspective, that  
12 there's clarity as to -- as I said before, whether these are  
13 superseding complaints or administrative complaints.

14 We do have very compelling motion to dismiss arguments  
15 that I referenced before that we would like an opportunity for  
16 you -- once -- once the consolidated complaints are on file,  
17 and we want to make sure that, as we believe they should, those  
18 dispose of the claims against our clients, against the investor  
19 defendants; that we have clarity and there's no procedural  
20 convolution when the cases are ultimately resolved in the MDL  
21 cases.

22 THE COURT: So I think, as the parties have pointed  
23 out, there are some pros and cons each way. There are some  
24 issues that are common to the overall case and to each of the  
25 defendant groups, and there are some distinct issues as well to

1 each of those groups.

2           When I looked at this, my assessment was that it would  
3 help the Court to carve out each of the separate issues as to  
4 each of the defendant groups. So if it doesn't make a big  
5 difference to plaintiffs' counsel -- I'm not hearing that -- I  
6 think we're on the same wave length, that we can do it either  
7 way, but I think for the Court's benefit, it would be  
8 preferable to have separate complaints as to each of those  
9 groups, and I think that will pay some dividends in other  
10 respects.

11           That being said, I do think that the value of the MDL  
12 is that there are some common discovery issues that will apply  
13 to all defendants, but I don't really see the reason for  
14 burdening defendants in one group from participating in certain  
15 aspects of claims against other defendants in which they are  
16 not affected nor when it comes to filing a motion to dismiss,  
17 that I think it would help the Court focus particularly on the  
18 grounds for those motions as to that particular subgroup.

19           So with that being said, you have no problem with  
20 filing separate complaint as to -- what are we in? To three  
21 different buckets here?

22           MR. BOIES: None at all, Your Honor. I think there's  
23 probably -- we can talk with defendants' counsel about this,  
24 but I think there are probably about five or six different  
25 groups of defendants.

1                   THE COURT: Okay.

2                   MR. BOIES: There are the so-called sports and  
3 entertainment or promoter defendants. There are the venture  
4 capital or the investor defendants. There are the insider  
5 defendants. There are the accounting firm defendants. There  
6 are the other professional advisor defendants that are probably  
7 distinct from the accounting defendants, and then there are a  
8 group of foreign, non-U.S. entities.

9                   THE COURT: Okay.

10                  MR. BOIES: And I suspect that the complaints -- if we  
11 had filed separate complaints, we would probably have five,  
12 possibly six separate complaints, unless there is a group of  
13 defendants here that want to be separated out from those five  
14 groups.

15                  But that would be what, I think, from the plaintiffs'  
16 standpoint, we would look at in terms of breaking it up under  
17 the so-called bundles of defendants.

18                  THE COURT: Okay. So you're comfortable, then, with  
19 the five or six complaints?

20                  MR. BOIES: Yes, Your Honor.

21                  THE COURT: And you can do that within 45 days?

22                  MR. BOIES: Yes, Your Honor.

23                  THE COURT: Everybody on the defense side comfortable  
24 with that?

25                  Hearing no objection, okay.

1                   MR. KROEGER: Yes, Your Honor. Thomas Kroeger. We  
2 would be comfortable with those complaints broken down along  
3 those lines. We would also ask to have, you know, 45 days to  
4 respond and renew, as we mentioned in our reports, our motions  
5 to dismiss.

6                   THE COURT: Any problem with that?

7                   MR. BOIES: No, Your Honor.

8                   THE COURT: So for scheduling purposes so far, we have  
9 14 days to address and hopefully resolve the issue of personal  
10 jurisdiction, 45 days for the filing of amended complaints, and  
11 45 days for the filing of responses to the amended complaints.

12                  MR. ZUTSHI: Your Honor, Rishi Zutshi. For the  
13 investor defendants, we -- and there's a number of different  
14 entities that are in that bucket, each with separate counsel,  
15 and I think for efficiency, we would like to coordinate as much  
16 as we can on a motion to dismiss when that comes.

17                  I think if we can get 60 days, that would facilitate us  
18 being able to coordinate better because of the number of  
19 parties involved.

20                  THE COURT: Do you have any objection that? You can  
21 say yes.

22                  MR. BOIES: You know, I always hate to object to  
23 counsel's request for time, particularly this early in the  
24 process. What I would ask is that they try to do it within  
25 45 days, and if they really need the additional 15 days, we

1 won't object to it.

2           But I would ask, if they could, we'd all try to get it  
3 done within 45 days. That's going to be three months from now.

4           THE COURT: Right.

5           MR. BOIES: So they've got three months from now to  
6 coordinate.

7           MR. ZUTSHI: Your Honor, we will absolutely make  
8 efforts to do so. I'm just cognizant of the fact that there's  
9 counsel for a few of the other investor defendants here at the  
10 table with me, but there are several folks, including folks who  
11 are only named in O'Keefe and who weren't sure if they were  
12 part of the MDL quite yet, and so I would just like a chance to  
13 consult with them.

14           THE COURT: Okay.

15           MR. ZUTSHI: We will -- we can absolutely commit to  
16 making an effort to try to...

17           THE COURT: A couple points on that. First of all, I  
18 don't think -- I don't anticipate there's going to be any big  
19 surprises in their amended complaint that you're not already  
20 aware of, so you know what's coming.

21           Secondly, I do agree that, you know, let's try with the  
22 idea -- let's work towards 45 for the motion to dismiss. Do  
23 your due diligence, and then if you need additional time, come  
24 to me and ask me for additional time and show me why you were  
25 not able to do it within the time that you were allotted. If I

1 see good cause, then fine. But I want to see diligence in the  
2 first instance. Okay?

3 And the other reason, I'm trying to keep it on track  
4 with the other parties to the other buckets, so we're all in  
5 the same -- we're all moving on the same track at least  
6 timewise. Okay? And if there's going to be some slippage,  
7 then so be it, but let's demonstrate diligence in the first  
8 instance.

9 Okay. So 14, 45, and 45. Does that address the  
10 complaints and the personal jurisdiction issue?

11 Okay. The next one that I have that you mentioned was  
12 staying discovery; right?

13 MR. BOIES: Excuse me, Your Honor?

14 THE COURT: The next issue that you raised was staying  
15 discovery?

16 MR. BOIES: Yes, Your Honor.

17 THE COURT: Okay. Did you want to say anything more on  
18 that?

19 MR. BOIES: Our view, Your Honor, is that while we  
20 don't in a way prejudge the motions to dismiss that they're  
21 going to make, we think that the Court would find it unlikely  
22 that the complaints would be entirely dismissed. So we think  
23 that it would be appropriate for some discovery to start now.

24 As the Court is aware in these kind of complex cases,  
25 you start serving document discovery, basic interrogatories,

1 parties make their initial disclosures, it takes a while before  
2 you're getting into depositions in any event.

3 So we think there's a lot of discovery that could go  
4 forward over the next three months awaiting on a decision on  
5 the motion to dismiss. Obviously, the Court is going to have  
6 to take some time after that three months to decide the motions  
7 to dismiss. So we think that during at that period of time it  
8 would be appropriate to start discovery.

9 On the other hand, we recognize that different courts  
10 take different approaches to staying discovery awaiting the  
11 motion to dismiss. We obviously want to accommodate whatever  
12 the Court's preference is on that.

13 THE COURT: All right. Any response?

14 MR. GREENBERG: Gerald Greenberg on behalf of Sam  
15 Bankman-Fried. We certainly think that matters should be  
16 stayed. I think we're probably -- and as far as the plaintiffs  
17 are concerned too, we move -- well, initially moved for a stay  
18 of all proceedings related to our client pending his criminal  
19 case. So we think certainly at minimum it should be stayed  
20 during this proceeding.

21 And our -- and our request was unopposed by plaintiffs  
22 with regard to the earlier complaint, so they may agree at this  
23 point.

24 But we would, with that in mind, support a stay  
25 certainly for the time being, and obviously, we will renew that

1 request once we see the amended complaint.

2 MR. BOIES: Your Honor, David Boies again. We agree  
3 that Mr. Sam Bankman-Fried is in a similar situation. And,  
4 indeed, we have been contacted by the U.S. Attorney's Office  
5 that's handling the criminal prosecution on Mr. Sam  
6 Bankman-Fried, and they have indicated that if we were to try  
7 to go ahead with discovery, they would come in and make,  
8 themselves, a motion to stay with respect to not the whole case  
9 but just with respect to the criminal defendant and the other  
10 people who have pled.

11 So we don't have any objection to that stay, but we  
12 don't think that stay needs to delay the commencement of  
13 discovery with respect to the other defendants.

14 Indeed, there's a great deal of information about  
15 Mr. Sam Bankman-Fried that both are going to come out of the  
16 criminal case and out of the bankruptcy proceeding. So there's  
17 a sense in which it's not our civil discovery but there's a  
18 sense in which discovery in the broadest generic sense is going  
19 on with respect to him at the present time. And we think that  
20 with respect to the other defendants, it would be appropriate  
21 to start discovery during the next several months.

22 THE COURT: Just with respect to Sam Fried, are you  
23 referring to all discovery with respect to him or just to  
24 depositions?

25 MR. BOIES: I think the U.S. Attorney's Office would

1 take the position regarding all discovery with respect to him.  
2 From our perspective, we think there would be no problem with  
3 him providing to us what is already being provided to the  
4 government and the like.

5 But I think in fairness, if the U.S. Attorney's Office  
6 were here, they would be saying that they would like to have a  
7 stay of all discovery with respect to Mr. Sam Bankman-Fried.

8 THE COURT: Well, I'll let you hash that out with the  
9 U.S. Attorney's Office. If you want to have that fight, you  
10 know, I'll be happy to referee it. But putting that defendant  
11 aside, what -- are there any other comments with regard to  
12 conducting discovery?

13 MR. KROEGER: Yes, Your Honor. Thomas Kroeger. The  
14 sports and entertainment defendants continue to believe that a  
15 stay of merit discovery would be appropriate pending the  
16 resolution of motions to dismiss, but assuming that some  
17 discovery does go forward, it ought to be reasonably tailored.  
18 As Your Honor is familiar from the Garrison case, the  
19 plaintiffs attempted to set 14 depositions essentially within a  
20 span of approximately two weeks. We don't think that that kind  
21 of discovery would be warranted or appropriate while the  
22 motions to dismiss are pending.

23 But our position is at its core that there simply  
24 should be a stay of ^ merit discovery until the Court rules on  
25 motions to dismiss. Perhaps those rulings could be conducted

1 in an expedited matter.

2 THE COURT: Anybody else?

3 MR. CARVER: Christopher Carver, Ackerman LLP, on  
4 behalf of Mr. Haslem and Mr. Ortiz. We have a very wide range  
5 of defendants here. We have large institutions down to  
6 individuals. In the Garrison case, the claims are novel. The  
7 claims were subjected to significant motions to dismiss, which  
8 we thought were dispositive.

9 And particularly with respect to individual defendants,  
10 allowing the type of broad discovery that plaintiffs attempted  
11 is not appropriate, we submit, in this type of case because it  
12 is now a massive case and there is no harm to plaintiffs  
13 whatsoever in delaying discovery until the motions to dismiss  
14 are decided.

15 FTX is not an operating entity. Nothing is going  
16 anywhere. Time doesn't hurt anyone. But forcing,  
17 particularly, individual defendants to incur the expenses of  
18 discovery in a case like this when the motions to dismiss, we  
19 submit, are extremely well-founded, this falls into the  
20 category of cases where the Eleventh Circuit has said that a  
21 stay of discovery is quite appropriate.

22 MR. ZUTSHI: Your Honor, Rishi Zutshi again for  
23 investor defendants. We also -- our position is that discovery  
24 should be stayed. I think there's three points that I make in  
25 that regard. First of all, we haven't seen new claims. We

1 have seen claims that have been asserted so far against  
2 investor defendants. We think they fail as a matter of law on  
3 the pleadings. The basic theory with respect to the investor  
4 defendants is that they aided and abetted a fraud by FTX and  
5 its insiders, the result of which was that, by plaintiffs own  
6 admission, the tens or hundreds of millions of dollars that the  
7 investor defendants had invested, they lost. It just -- the  
8 underlying theory behind the allegations that have been made  
9 against our clients make no sense. They're implausible on  
10 their face.

11 In addition to that, there's no well plead facts in  
12 many of the elements of claims. I won't go through those  
13 issues. But we have very, very well-founded motions to  
14 dismiss. Those motions to dismiss will be dispositive of all  
15 claims against our clients; that setting aside personal  
16 jurisdiction issues, that's just with respect to our 12(b) (6)  
17 arguments.

18 We will, as we talked about before, endeavor to brief  
19 those issues as quickly as possible, and we're happy to have  
20 them resolve as quickly as the Court is able, but we think  
21 that's a key -- a key factor under this circuit's law to stay  
22 discovery.

23 The second factor that's unique here is what we heard  
24 about the U.S. Attorney's Office and the criminal prosecutions  
25 with respect Mr. Bankman-Fried. Mr. Boyd said earlier that

1 those overall issues are going to be the same in this case.  
2 And I think the reference there is same issues that the panel  
3 found, which is the underlying allegations against our clients  
4 are all derivative of an alleged fraud by FTX and its insiders.  
5 If discovery into that fraud is being stayed in any respect, us  
6 proceeding with discovery in a piecemeal fashion that's on the  
7 outer bounds of the claims -- it doesn't go to the part of the  
8 issue as to what the scope of the fraud was, whether it was  
9 being kept from us, which, frankly, the SEC has alleged in its  
10 complaint against Mr. Bankman-Fried that -- I can quote this,  
11 that "The fraud was committed unbeknownst to those investors."  
12 The investors being referenced there include our clients here.

13 It would be incredibly prejudicial for us to have any  
14 sort of discovery proceeding in this case with respect to our  
15 clients when we're not able to access full discovery from the  
16 main players in the alleged fraud.

17 And finally with respect to prejudice, in addition to  
18 what counsel just said, Mr. Boies made reference to the fact  
19 that there is going to be effectively discovery available to  
20 the plaintiffs through the bankruptcy and the criminal  
21 proceedings. Again, that discovery is going to go to the heart  
22 of issues. That's going to go to the scope of the FTX fraud;  
23 so I don't think there's any prejudice to plaintiffs to wait.

24 They haven't yet filed an amended complaint. By the  
25 time we get through amended complaints and motions to dismiss,

1 there's a good chance that there have been significant advances  
2 in the criminal prosecutions. There's a trial set for October  
3 of this year, in March of 2024 for the two proceedings against  
4 Mr. Bankman-Fried.

5 THE COURT: Anybody else for the defense? Any  
6 response?

7 Two of you are standing.

8 MR. MOSKOWITZ: Your Honor, may it please the Court,  
9 Adam Moskowitz. I would just like to give a couple points of  
10 reality in that we have been litigating these claims against  
11 these types of defendants for more than year.

12 So what's happened? I mean, a lot of what they're  
13 saying is hypothetical or looking forward. We can look  
14 backwards.

15 First of all, most of the celebrity defendants claim  
16 they have nothing. They couldn't give no discovery. One guy  
17 says, "I made a commercial and I have nothing else."

18 So all of these original claims of they're going to be  
19 burdensome and it's going to be so overwhelming -- what they  
20 answered finally was, "We don't have much." So there's not  
21 much there to get.

22 Second, now we have Magistrate Alicia Otazo, who is  
23 very much capable, as the magistrates have done in our other  
24 two cases. If there's an objection on burdensome, she can  
25 raise it, and we have done that. We have done that with

1 Magistrate Reid in her Voyager case, and we've handled any  
2 objection raised by the defendants.

3 The third point, Your Honor, is there's still factual  
4 differences, even on the most basic points, that they're going  
5 to raise to dismiss this case. For example, they've been  
6 saying from the beginning, "There's no connection to Miami.  
7 There's simply no connection to Miami." Well, Your Honor, read  
8 our 327-page amended complaint. And it has a declaration of  
9 Dan Friedberg, who's the chief compliance officer at FTX. He  
10 goes through six or seven pages of detail of why the Miami  
11 office was so important.

12 If you look at the celebrity status report that they  
13 gave you last week in Footnote 3, it summarizes that to say all  
14 plaintiffs have said is there could be one employee that didn't  
15 work for FTX that may have resided in Florida. So we're kind  
16 of speaking, you know, in Alice in Wonderland. Like we'll say  
17 one thing; they'll say one thing.

18 So there's a real difference here in terms of the facts  
19 for the motions to dismiss that they're going to file, and  
20 that's why the discovery is so important because if we didn't  
21 get that discovery, we would still be under the impression  
22 there's no connection to Miami, there may be no MDL to Miami,  
23 we wouldn't have learned any of these facts.

24 So that's why we think reasonable discovery is proper  
25 from the beginning, like Judge Altman found. And if there's an

1       objection, we have a magistrate in place who can certainly hear  
2       the objection and rule on it.

3               Thank you, Your Honor.

4       THE COURT: Okay. Well, I would normally -- and this  
5       is not a normal case, but normally I am disinclined to stay  
6       discovery during the motion stage, but I recognize that there  
7       may be circumstances here that might warrant it.

8               But let me ask you this: This issue has not been  
9       briefed, has it?

10       MR. MOSKOWITZ: Not in the FTX case. In the Binance  
11       case, there was a motion to stay discovery, and Judge Altman  
12       peeked at the merits and said, "I peek at the merits. This  
13       case isn't going away. I'm going to not allow a blanket stay."

14       MR. CARVER: Your Honor, Christopher Carver, Ackerman  
15       LLP. In the Garrison case, we filed a motion to stay  
16       discovery. That basically was punted when the case was  
17       transferred to the MDL. It has not -- it was not fully  
18       briefed, but our motion is on file.

19               Let me -- let me correct that. With respect to  
20       jurisdictional discovery, plaintiffs opposed it, but respect to  
21       merit discovery, the plaintiffs did not oppose it. They filed  
22       a very brief response. The Court did not rule on that. It got  
23       sucked to the side as a result of the transfer to the MDL.

24       THE COURT: Right.

25       MR. CARVER: But we have -- we have laid out why in our

1       -- in the Garrison case, which is the sports -- now the sports  
2 and entertainer defendants, discovery should be stayed.

3           THE COURT: Okay. Can we get a -- can we tee this up  
4 again? Get a motion to stay discovery?

5           MR. CARVER: On behalf of the sports and entertainment  
6 defendants, absolutely.

7           THE COURT: Anybody else who wants to stay discovery  
8 too? I want to -- I want to brief the issue.

9           MR. CARVER: Okay. Your Honor, the question is when  
10 for the sports and entertainer defendants? I think we can do  
11 it within 21 days because we have done it, but I don't know  
12 about the other defendants.

13           MR. ZUTSHI: Your Honor, we are differently situated.  
14 There's no attempts at discovery. Many of the defendants in  
15 this group haven't even been served in these claims. We've  
16 heard it. We don't know what the -- what the amended  
17 complaints are going to look like, and we have not had any  
18 discussions with plaintiffs' counsel about discovery before  
19 this conference.

20           So I think it may make sense, with Your Honor's  
21 permission, for us to see if we can -- if we can further those  
22 issues through discussion among the parties in the first  
23 instance, and see if there's any resolution that can be  
24 reached. I just -- I think that it would be unusual, in my  
25 experience, to brief a stay of discovery before we've seen an

1 amended complaint.

2 THE COURT: I agree with that. So you are going to  
3 file -- at least with the sports, you are going to file a  
4 motion to stay discovery.

5 MR. CARVER: If that's what Your Honor wants,  
6 absolutely.

7 THE COURT: Yeah. I would like to brief this because I  
8 think there are some pros and cons to this issue that I don't  
9 want to rule on from the bench. And the fact that at least  
10 some of the defendants have not been served with a complaint or  
11 amended complaint I think weighs in favor of staying discovery  
12 at least until such time as it -- you go ahead and push the  
13 issue by moving for discovery. Okay? So take your best shot  
14 and see how they respond, but it may be a little premature to  
15 try to pursue discovery at this point. It may come up again  
16 soon, and we can take it up.

17 As an aside, there was something that I was going to  
18 talk about at some point, but I might as well do it now. So  
19 we're on our third magistrate judge; right? And this just  
20 happens to be a magistrate judge who is also going to be  
21 completing her service as a magistrate judge at the end of  
22 November. Okay? So she's retiring from service.

23 It is not uncommon, I don't think, in these kind of  
24 cases, given the complexity of the case and the time that we  
25 can expect to devote to it, to consider the appointment of a

1 special master. And I would like to discuss that with the  
2 parties and get their thoughts on whether they would think that  
3 is appropriate or inappropriate, necessary, helpful, unhelpful  
4 under Rule 53 and what your thoughts are.

5 MR. BOIES: Your Honor, we would certainly be amenable  
6 to a special master if the Court thinks that's desirable. I've  
7 certainly been in MDLs where there have been special masters  
8 and not. If the magistrate is going to be retiring in  
9 November, depending on the decisions of the motions to dismiss,  
10 that's going to be shortly after we really begin to get into  
11 the heat of discovery, it may be useful to have a special  
12 master. I don't know whether the Court would intend to appoint  
13 a magistrate thereafter or not. And exactly how you divide the  
14 roles between the special master and the magistrate is  
15 obviously something we would entirely defer to the Court on.

16 THE COURT: Well, look at -- you've probably been on  
17 more of these than I have, so you have seen the pros and the  
18 cons. And my guess is the success very much depends on who the  
19 person is.

20 MR. BOIES: Yes, Your Honor.

21 THE COURT: So I fully anticipate keeping the motion to  
22 dismiss. I'm not going to refer that out for a court  
23 recommendation. It's a dispositive motion, and I keep them as  
24 a matter of practice.

25 The discovery issues -- I think they're going to be --

1 there's going to be a lot of them, and they're going to be very  
2 disparate depending on the particular party. It may be a  
3 little premature, but I see it on the horizon, and I just don't  
4 like the idea personally of trying to get one magistrate up to  
5 speed on these issues and then -- what are we now? We're at  
6 the end of June? -- five months later, say, you know, it's all  
7 going to be turned over to some other magistrate judge and it  
8 just does not seem to be particularly helpful.

9 So my thought would be unless there's some discrete  
10 issue that the currently assigned magistrate judge can handle  
11 between now and when she leaves office, that I would, whoever  
12 is going to succeed her, start using that judicial officer for  
13 whatever help they can provide.

14 And for all I know, I mean, Judge Otazo Reyes could  
15 decide next week or the week after that for whatever reason,  
16 she wants to recuse. I'm not assuming that. I'm assuming  
17 she's going to be doing her judicial work until the end of  
18 November.

19 But that being said -- and that's only one  
20 consideration. Whether she was going to be here for another  
21 eight years, I would still be looking at this issue of the  
22 value that a good special master might provide to all the  
23 parties. And I'm willing to entertain, when I look at the  
24 rule, each side has an opportunity to submit a name or names  
25 that you would want the Court to consider. I'm happy to

1 consider that. There are some conditions that have to be  
2 satisfied in order to appoint a special master.

3 If you don't want to submit names, I -- believe it or  
4 not, I have somebody that -- that you might want to consider,  
5 maybe more than one person but -- and you might not want to.  
6 You might be opposed to that individual, but I wouldn't make a  
7 suggestion if I didn't have full faith and confidence that the  
8 individual had the requisite skill and abilities that would be  
9 helpful in moving litigation forward.

10 So from the other side, did I get any input on that  
11 point?

12 MR. KROEGER: Yes, Your Honor. Thomas Kroeger. From  
13 the perspective of the sports and entertainment defendants, we  
14 think that the appointment of a special master might be a bit  
15 premature at this point, especially given what we believe are  
16 very compelling motions to dismiss.

17 The scope of the claims is likely to be substantially  
18 winnowed or narrowed as we proceed through that phase. Given  
19 the current timeline we have been discussing, we're already  
20 essentially three months out by the time the Court will start  
21 to consider and rule on those motions. And we believe it might  
22 be more appropriate to consider the appointment of a special  
23 master once the Court has considered and ruled on those motions  
24 and we're at that juncture where the merits of discovery is  
25 likely to heat up.

1                   THE COURT: I think that's a good point. So we'll hold  
2 off on that, but that kind of -- the reason it was raised, it  
3 was kind of leading into the issue of discovery, and so we're  
4 going to get that issue on discovery pending the motion to  
5 dismiss. We'll take up that issue and give you a ruling on  
6 that, and we'll decide whether we're going to have no  
7 discovery, some discovery, or discovery once we have that issue  
8 briefed. Okay.

9                   So you had three issues to begin with: The personal  
10 jurisdiction, the complaint, and the discovery.

11                   What next.

12                   MR. BOIES: Those were -- those were our primary  
13 issues, Your Honor. This is David Boies again. We do think  
14 that it would be helpful, in addition to the plaintiffs'  
15 organization, if we had defendants' liaison counsel. We could  
16 focus on -- I think the steps that we have taken in terms of  
17 saying we're going to have these groups, bundles of defendants  
18 is a good first step. And if each of those bundles have  
19 liaison counsel we could deal with on some of these issues, I  
20 think that would be helpful. And the MDL rules suggest that  
21 that's something for the Court to consider, and we think that  
22 would be helpful.

23                   THE COURT: Okay. Who wants to --

24                   MR. KROEGER: Thank you, Your Honor. Thomas Kroeger.  
25 We would similarly suggest that a liaison counsel might be a

1 premature selection at this point, just depending on how the  
2 motions to dismiss are resolved, in terms of what defendants  
3 actually end up remaining in the MDL.

4 So in theory it's probably wise, but we think that the  
5 actual appointment or selection of one at this juncture again  
6 might be a bit premature.

7 MS. BINA: Your Honor, Jessica Stebbins Bina on behalf  
8 of defendants Brady, Bundchen, O'Neal, and David.

9 Your Honor has already proposed separate groups of  
10 defendants, separate complaints. I think it would make sense  
11 to consider any liaison counsel on a defendant group by  
12 defendant-group basis at minimum, and it seems potentially  
13 unnecessary to do so formally. Most MDLs don't have a  
14 formalized defense liaison counsel.

15 I suggest we first see the amended complaints, see the  
16 groupings, and then meet and confer with plaintiffs on this  
17 issue as to whether it is actually necessary or helpful in this  
18 instance.

19 THE COURT: Do you know how to get in touch with them?

20 MR. BOIES: Your Honor, I would disagree that most MDLs  
21 do not have defense liaisons. Most MDLs -- anything like this  
22 size and complexity do have defense liaison counsel. I do  
23 agree with defense counsel that it makes sense to have liaison  
24 counsel, at least initially, by the defendant groups, but I  
25 don't think -- I don't think this is premature because we're

1 going to be dealing with them on all sorts of scheduling issues  
2 over the next three months.

3 Just look at the number of lawyers in this room.  
4 Trying to get all of them, you know, herded together to even  
5 get a meet and confer, for example, on some of the things that  
6 we need to meet and confer on today, I think it would be  
7 extremely challenging.

8 So I think that in the interim -- and maybe they're  
9 just interim liaison counsel, but we do need somebody who is  
10 going to be the contact so we're not dealing with literally  
11 dozens of different lawyers or law firms.

12 MR. ZUTSHI: Your Honor, Rishi Zutshi again. I will  
13 say that we've done a lot of work to try and coordinate so far  
14 among the investor defendants and also some of the other  
15 defendants. So while I appreciate Mr. Boies' concerns, I think  
16 we've been working so far with those plaintiffs' counsel whom  
17 have been in touch with us and to coordinate well, and that  
18 this is an issue that we can take up informally in the first  
19 instance. And if it presents an issue later on, as counsel  
20 here at this table have suggested, we could revisit it whenever  
21 we're next before Your Honor.

22 THE COURT: Are you comfortable with that for the time  
23 being?

24 Are you comfortable with that for the time being?

25 MR. BOIES: Yes, Your Honor. Let us talk to them and

1 see if we can work this out.

2 THE COURT: Okay.

3 MR. BOIES: I do think that we're going to need liaison  
4 counsel. I think it's just -- it's going to be morass if we  
5 have to try and deal with individually all the lawyers on the  
6 other side. But let us try to work it out and see if we can  
7 come back with a proposal to the Court.

8 THE COURT: Yeah. And I think just for the sake of  
9 collegiality and professionalism and civility that this would  
10 be a good example of your ability to work with one another and  
11 not make it any more difficult than it needs to be.

12 By the way, just as a minor point, I know getting  
13 together sometimes may be difficult and arranging where and  
14 time, we do have a lawyer's conference room on the 14th floor  
15 of this building that is available and accessible to you if you  
16 need a neutral site, and I invite you to avail yourselves of  
17 it. It's there for that purpose. It's a little larger room,  
18 than trying to huddle in the hallway or out in the foyer. So  
19 just be aware of it. If you want to take advantage of it, by  
20 all means.

21 Okay. So we kind of punted on the defense liaison  
22 counsel for the time being, but we can revisit that issue if it  
23 proves to be unworkable informally. Okay?

24 What's your next issue?

25 MR. BOIES: That completes the issues that we had,

1 Your Honor.

2 THE COURT: Okay. For the defense?

3 MR. GREENBERG: Your Honor, Gerald Greenberg on behalf  
4 of Mr. Bankman-Fried. I don't think we have anything in  
5 addition to what's already been discussed.

6 THE COURT: Can you just tell me, it would be helpful  
7 to me, the timeline of the criminal matter, if you can share.  
8 I don't want you to tell me anything that I'm not supposed to  
9 know.

10 MR. GREENBERG: Sure, Your Honor. There are -- the  
11 criminal case in the Southern District of New York currently  
12 has two trial dates because certain counsel were separated out  
13 based on defense motions relating to some of the international  
14 component of the case.

15 The current dates are October of 2023 and March  
16 of 2024. I have been advised by the counsel handling those  
17 that those, at least, you know, the best anyone can say right  
18 now, seem like real dates. And each one could go -- and again,  
19 this is speculation at this point -- in the five- to seven-week  
20 range. So if that sticks, it would end things in, you know,  
21 not by this time next year, but, you know, spring of 2024.  
22 But, again, that's -- as always in the case of this nature,  
23 that's somewhat speculative.

24 THE COURT: Right.

25 Okay. Thank you.

1 MR. GREENBERG: Thank you.

2 MR. KROEGER: Thank you, Your Honor. Thomas Kroeger.

3 Just two points. First on clarification, in terms of the  
4 motion to stay discovery, I just want to clarify the timing of  
5 when Your Honor would like to receive that. In theory, that  
6 would follow the filing of the amended complaints. But if  
7 Your Honor wants to tee it up somewhat differently in terms of  
8 scheduling, that can certainly be done. I just want to  
9 clarify.

10 THE COURT: Well, what I'm envisioning is that there  
11 has been no demand for discovery that's been put on you at this  
12 point; right?

13 MR. KROEGER: Correct.

14 THE COURT: So --

15 MR. BOIES: We're not sure.

16 MR. CARVER: Your Honor, actually, we're in kind of a  
17 weird limbo. There were discovery requests served. There were  
18 deposition notices served that were objected to. Then because  
19 the case got transferred in MDL and everything was stayed, our  
20 position is that the discovery was stayed also until the Court  
21 said it wasn't, and we had our motion to stay discovery which  
22 had been briefed, but the Court hadn't decided when it was  
23 transferred to the MDL. So there's discovery kind of out  
24 there, but it's in limbo.

25 THE COURT: So are you saying that there's an

1 outstanding motion that's ripe that has not been ruled on?

2 MR. CARVER: Correct, Your Honor.

3 THE COURT: Okay. So can I deny that as moot and  
4 subject to whatever future renewed discovery requests that  
5 plaintiffs' counsel may make?

6 MR. CARVER: Your Honor, I would never tell a judge he  
7 couldn't do something. Certainly, it would seem, since we do  
8 not have an operative complaint at this time, that motion  
9 should be denied as moot as were virtually every motion that  
10 was pending in Garrison. In fact, I think that might be the  
11 only one outstanding.

12 THE COURT: Any problem with that?

13 MR. BOIES: Your Honor, I have one problem with that,  
14 and that is he says there's no operative complaint. It is true  
15 that we're going to file a consolidated amended complaint,  
16 which is typical in MDL practice, but there are operative  
17 complaints out there. All of the defendants know basically  
18 what these claims are. They've had them for a while. Some of  
19 them have even made motions against them. This is not a  
20 situation which there's no operative complaint with respect to  
21 which we can take discovery. We've actually served some  
22 discovery already.

23 I think it would be appropriate that if they're going  
24 to take the position that no discovery ought to take place  
25 until the motions to dismiss are decided, that they should make

1 those motions now. We should brief them, and the Court can  
2 decide them. We think if the Court simply takes a peek, to use  
3 another judge's view -- words, at the complaint, the Court can  
4 make a judgment as to whether this is an appropriate case to go  
5 forward on discovery or not. I think they ought to make those  
6 motions now.

7 Now, if -- that's a different question, as to whether  
8 discovery that we're seeking is a burden. That is something  
9 that would go to a special master, to a magistrate, however it  
10 works out in this case. But in terms of an absolute bar on any  
11 discovery at this point, I think they ought to make their  
12 motions now, we ought to brief them, and allow the Court to  
13 decide.

14 THE COURT: All right. I want to make sure my docket  
15 is cleaned up. I mean, you're saying that there's a motion  
16 outstanding that I have not ruled on?

17 MR. BOIES: I have no problem with that being denied.  
18 And under the circumstances, they will make a new motion, we'll  
19 brief it, and the Court can then decide on that motion.

20 THE COURT: Are you okay with that?

21 MR. CARVER: Yes, Your Honor. My only question is when  
22 would the Court want the new motion. Right now we've got to --  
23 we do have an operative complaint, but we have a complaint that  
24 we know is going to be superseded, which is going to be filed  
25 in 45 days. It makes sense since everyone in this room knows

1 that the current pleadings across the board are not the  
2 pleadings, that once plaintiffs file their effective  
3 consolidated complaint, that -- then we can file our motion to  
4 stay discovery within 21 days of that date, and nothing is  
5 harmed by cleaning up the procedural limbo that we're in right  
6 now and waiting 21 days after plaintiffs file their  
7 consolidated amended complaint, to file a motion to stay  
8 discovery. And by that time, all of the defendants on this  
9 side of the table, speaking for -- to the right of me -- they  
10 will know what their allegations are and whether or not they  
11 seek to stay discovery. And that's, frankly, I think, the  
12 cleanest way to do this.

13 THE COURT: Okay. Well, we got them to agree to -- I  
14 grant your motion.

15 MR. CARVER: I think he said denied, Your Honor.

16 THE COURT: To deny the motion to -- it's your motion.

17 MR. CARVER: My motion to stay discovery, to deny is as  
18 moot. He agrees to that.

19 THE COURT: Okay. Denied as moot. Okay. So we'll do  
20 that. And then where are we? Are we waiting until -- are you  
21 going to -- are you going to file new motions for discovery, or  
22 are you going to -- and are they going to be before you file an  
23 amended complaint or after?

24 MR. CARVER: Your Honor, that is -- that's at the  
25 Court's determination. If the Court wants a motion to stay

1 discovery now, we can do it, but I think it makes sense to file  
2 it once we see the consolidated amended complaint. And the  
3 defendants along this side of table and the ones that aren't  
4 here are going to need to see that consolidated amended  
5 complaint.

6 THE COURT: So you want them to file their motion?

7 MR. BOIES: We want them to file the motion now so we  
8 can respond.

9 THE COURT: Okay. So go ahead and file your motion.

10 MR. CARVER: Twenty one days from today, Your Honor.

11 THE COURT: Is that okay?

12 MR. BOIES: Yes, Your Honor.

13 THE COURT: All right. Okay.

14 MR. ZUTSHI: I just -- and I want to -- this is Rishi  
15 Zutshi. I want to clarify that that deadline applies with  
16 respect to the sports and entertainer defendants who had a  
17 motion previously briefed and who apparently had engaged in  
18 some discovery practice before. The investor defendants had  
19 not been subject to any discovery request yet, so --

20 THE COURT: There's nothing for you to complain about.

21 MR. ZUTSHI: Yes.

22 MR. BOIES: Your Honor, we would certainly give them a  
23 discovery request. So if they want to stay discovery, I think  
24 they ought to make the motion now. If all they want to do is  
25 object to some of our discovery as burdensome, that's a

1 separate issue, and that would go to a magistrate but --

2 THE COURT: Right now they don't have anything to  
3 object to because they --

4 MR. BOIES: We will give them that, Your Honor.

5 THE COURT: There you go. Okay.

6 MR. CARVER: Your Honor, not to complicate things, but  
7 if plaintiffs are going to serve discovery on defendants that  
8 haven't had discovery and that's going to cause those  
9 defendants to file a motion to stay discovery, which I think  
10 everyone in this room understands, it might be easier for the  
11 Court to have those motions on the same schedule. It's up to  
12 Your honor. I'm raising the issue. I'm happy to file within  
13 21 days or 21 days from whatever date plaintiffs and the other  
14 defendants decide is an appropriate time. I just -- I'm trying  
15 to help.

16 THE COURT: Complicate the issues. But go ahead and  
17 file yours, and we'll take them up as they're filed.

18 MR. CARVER: Okay. Your Honor, we do have another  
19 issue on the sports and entertainer defendants.

20 THE COURT: All right.

21 MR. CARVER: Mr. Bankman-Fried's preliminary report  
22 referenced arbitration and class waiver provisions that the  
23 preliminary reports says every plaintiff is bound by. The  
24 sports and entertainer defendants don't have copies of those  
25 documents. That's going to be an issue in this case when we

1 finally get access to those documents. And I just wanted to  
2 flag that as they relate in Item 6 in the Court's order of  
3 things to talk about was related issues that should be brought  
4 to the attention of the Court. That's one of them.

5 THE COURT: Okay. All right. What else? I got all  
6 day for you.

7 MR. BOIES: Nothing for the plaintiffs, Your Honor.

8 THE COURT: Okay.

9 MR. ZUTSHI: Rishi -- there's nothing further from us.  
10 Just except for one housekeeping issue, Your Honor. I know  
11 that the order contemplated, if necessary, follow-up conference  
12 next week. It appears we are making progress today. We  
13 obviously have a lot of issues to discuss with plaintiffs'  
14 counsel and among ourselves, but -- and is the Court needing us  
15 to resume this next week?

16 THE COURT: So at that time, I was not anticipating the  
17 resolution of the lead plaintiffs' counsel. I thought that was  
18 going to be an issue that would require some follow-up. That  
19 issue appears to be moot. And by the way, I will incorporate  
20 that as part of the order that's entered following today's  
21 hearing.

22 But I'm certainly available if there are other issues.  
23 I don't want to inconvenience anybody unnecessarily. I know  
24 many of you are out of town and have logistical issues, and I  
25 don't want to burden you with that. Don't expect a lot of

1       Zooms, by the way. But I am available if anybody sees an issue  
2       now that would make another status conference necessary next  
3       week. If not, I don't need to take up your time unnecessarily.  
4       Does anybody see a need at this time?

5                    MR. BOIES: May I have just a moment, Your Honor?

6                    THE COURT: Yes.

7                    MR. BOIES: Your Honor, I don't think either plaintiffs  
8        or defendants think it would be necessary next week to have  
9        another status conference.

10                  THE COURT: All right. So that's canceled. But if it  
11        changes, if some of the informal discussions resolve some of  
12        these issues or if they don't and you think you need some  
13        judicial intervention, just alert us to that, move for it, and  
14        we'll take it up.

15                  Fair enough?

16                  MR. BOIES: Yes, Your Honor.

17                  Could I just inquire, if we conclude that we would like  
18        to have a status conference, what is the way for us to approach  
19        the Court on that? Is it a letter?

20                  THE COURT: Not a letter. You told me you were  
21        familiar with the local rules when you admitted pro hac vice.  
22        And that's prohibited.

23                  And I don't prefer that you call chambers. I like to  
24        have a record, and it should be on the docket, a CM/ECF number,  
25        that the parties jointly request a status conference or that

1 you agreed on or that one of you does and the other doesn't, in  
2 which case I'll -- I'll make a decision whether we need to have  
3 a hearing on it.

4 MR. BOIES: Thank you, Your Honor.

5 THE COURT: I like to stick to the record.

6 MR. BOIES: Thank you, Your Honor.

7 THE COURT: Okay. Anybody? Everybody has been heard?  
8 If nothing else, then thank you for coming in. Good to see  
9 you-all, and we will be in recess.

10 ( The status conference was concluded at 11:12 a.m.)

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4 I, TRISH BAILEY-ENTIN, Stenographic Reporter, State of Florida  
5 at Large, certify that I was authorized to and did  
6 stenographically report the foregoing proceedings and that the  
7 transcript is a true and complete record of my stenographic  
8 notes.

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10 Dated this 21st day of June 2023.

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TRISH BAILEY-ENTIN, RPR, FPR

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